

unless (1) no other person has submitted a plan for the area involved which satisfies the regulations of this part and (2) the information which would be obtained from the Survey is needed to make an adequate report to Congress pursuant to the Act. Sections 37.13, 37.14, 37.22(d)(3), 37.46, 37.47, and 37.54(d) and the provisions of §§ 37.22(d)(2), 37.53(e), and 37.54 on processed, analyzed and interpreted data or information shall not apply to the Survey. If authorized to conduct exploratory activities, the Survey shall comply with this part in all other respects. All contractors and subcontractors used by the Survey to conduct exploratory activities shall be subject to all of the regulations of this part excepting §§ 37.13 and 37.46 and the provisions of §§ 37.22(d)(2), 37.53(e), and 37.54 on processed, analyzed and interpreted data or information.

**§ 37.46 Cost reimbursement.**

(a) Each applicant for or holder of a special use permit issued under this part shall reimburse the Department for its actual costs incurred, including, but not limited to, its direct costs and indirect costs as established by the indirect cost rate of the charging bureau or office, in publishing, reviewing (which includes, but is not limited to, conducting any public hearings thereon), modifying, and approving or disapproving the applicant's or permittee's exploration plan(s); reviewing evidence of the permittee's compliance with any order given by the Regional Director under § 37.13; preparing and issuing the permittee's special use permit; reviewing and acting on the permittee's plan(s) of operation; inspecting, monitoring, and enforcing the permittee's compliance with its approved exploration plan(s), plan(s) or operation, special use permit and this part; performing the permittee's obligations pursuant to § 37.31(a); and identifying, evaluating and preserving historic, archeological and cultural resources in areas to be explored by the permittee; as further delineated by the Regional Director.

(b) Each applicant shall submit with each exploration plan submitted a payment, the amount of which shall be an estimate made by the Regional Direc-

tor of the costs which will be incurred by the Department in publishing, reviewing, modifying and approving or disapproving the applicant's exploration plan.

(1) If the applicant's plan is disapproved or if the applicant withdraws its application before a decision is reached on its plan, the applicant shall be responsible for such costs incurred by the Department in processing the applicant's application up to the date on which the plan is disapproved or the Regional Director receives written notice of the applicant's withdrawal, and for costs subsequently incurred by the Department in terminating the application review process. If the costs actually incurred exceed the estimate paid at the time of application, reimbursement by the applicant of such additional costs shall be due within 30 days of receiving notice from the Regional Director of the additional amount due. If the actual costs incurred are less than the estimate paid by the applicant, the excess shall be refunded to the applicant.

(2) If the applicant's plan is approved, the applicant shall pay an estimate made by the Regional Director of the costs which will be incurred by the Department in preparing and issuing to the applicant a special use permit. The first quarterly payment made by the applicant pursuant to paragraph (c) of this section will be adjusted upward or downward, as warranted, to accurately reflect the actual costs incurred by the Department in processing the permit. If an applicant withdraws after its plan is approved, but before its special use permit is issued, the applicant shall be responsible for such costs incurred by the Department in preparing the applicant's permit up to the date on which the Regional Director receives written notice of the applicant's withdrawal and for costs subsequently incurred by the Department in terminating permit preparation and issuance.

(3) When two or more applications are filed which the Regional Director determines to be in competition with each other, each applicant shall reimburse the Department for such actual costs incurred in processing its exploration plan and special use permit, if issued, except that those costs which

are not readily identifiable with one of the applicants, shall be paid by each of the applicants in equal shares.

(c) Upon issuance of a special use permit, the permittee shall make an initial advance payment covering that current fiscal year quarter and quarterly payments thereafter to cover the actual costs incurred by the Department in administering the permittee's permit for its duration. Such costs shall include, but are not limited to, those direct costs and indirect costs, as established by the indirect costs rate of the charging bureau or office, incurred in reviewing and acting on permittee's plan(s) of operation; reviewing evidence of the permittee's compliance with any order given by the Regional Director under § 37.13; preparing and issuing the permittee's special use permit; inspecting, monitoring, and enforcing the permittee's compliance with its approved exploration plan, plan(s) of operation, special use permit and this part; performing the permittee's obligations pursuant to § 37.31(a); and identifying, evaluating and preserving historic, archeological and cultural resources in areas to be explored by the permittee. Each quarterly payment will be paid at the outset of the quarter and will cover the estimated cost of that quarter as adjusted by the Regional Director by reason of any adjustment warranted by paragraph (b) of this section or by overpayments or underpayments in previous quarters for which adjustment has not already been made. Upon termination of the permittee's special use permit, reimbursement or refundment of any outstanding amounts due the Department or the permittee shall be made within 180 days.

(d) Estimates required by this section shall be made by the Regional Director on the basis of the best available cost information. However, reimbursement shall not be limited to the Regional Director's estimate if actual costs exceed projected estimates.

(e) All payments required by this section shall be made payable to the Service. No applicant or permittee shall set off or otherwise deduct any debt due to or any sum claimed to be owed to it by the United States from any payment required by this section. Overpayments

shall be credited or refunded to the person making them.

(f) When through partnership, joint venture or other business arrangement more than one person applies for or participates in a special use permit, each shall be jointly and severally liable for reimbursing the Department's cost under this section.

(g) Any lodging, food, communication, and transportation provided by a permittee under § 37.42 shall be deemed to be costs paid to the Department in kind for services rendered in inspecting and monitoring the permittee's exploratory activities. At the end of each quarter, the permittee shall furnish the Regional Director with a report, in a format approved or prescribed by him, on the goods and services provided during that quarter, and the names of the individuals to whom they were provided.

(h) Any dispute between an applicant or permittee and the Regional Director as to costs actually incurred by the Department and charged to the applicant or permittee shall be finally decided for the Secretary by the Director, using the procedures described in § 37.22(c).

#### § 37.47 Civil penalties.

(a) This section prescribes the procedures for assessing a civil penalty for the violation of any provision of an approved exploration plan, any term or condition of the special use permit issued under § 37.23, or any prohibition contained in this part. The civil penalty remedy afforded by this section is in addition to all other remedies available to the Secretary.

(b) *Notice of violation.* (1) The notice of violation shall be issued by the Solicitor and served personally or by registered mail upon the person named in the notice (hereinafter the respondent) or his authorized representative. The notice shall contain:

(i) A summary of the facts believed to show a violation by the respondent;

(ii) A specific reference to the provision, term, condition or prohibition allegedly violated; and

(iii) The amount of the penalty proposed to be assessed. The notice may also contain an initial proposal for